

# **KENTUCKY DEPARTMENT OF EDUCATION**

## **STAFF NOTE**

### **Action/Discussion Item:**

2007 Legislative Agenda

### **Action Question:**

What legislative proposals related to public education should the Kentucky Board of Education endorse for consideration by the 2007 General Assembly?

### **History/Background:**

***Existing policy.*** Beginning in January, the 2007 General Assembly will meet for up to 30 legislative days. The first part of the session, the legislature will elect leadership, appoint committees, and introduce legislation. After completing its organizational duties, the General Assembly will adjourn and reconvene on the first Tuesday in February to further consider legislation. Any bill raising revenue or appropriating funds must be agreed to by three-fifths of all members elected to each chamber.

The Kentucky Board of Education considers adoption of a legislative agenda prior to each session of the General Assembly. Generally, only bills with broad support are passed during the short session.

### **Studies**

Several studies and initiatives are underway that may result in recommendations requiring legislative changes, including:

- School Calendar;
- School Facilities Evaluation Committee;
- Assistance to Schools not Meeting Student Achievement Goals; and
- Pupil Transportation.

The Board will want to consider endorsing study recommendations when available.

At the August meeting, after reviewing the 2006 budget proposals that were not adopted, the members of the Board suggested the following:

- Continue to advocate for the superintendent to have a meaningful role in principal hiring;
- Continue focus on preschool and full funding for kindergarten;
- Provide proposals relating to nonresident students;
- Provide information on prevailing wage and the method for determining the prevailing wage;

- Provide information about a back-to-school tax holiday and tobacco free schools and facilities; and
- Propose changes in the SEEK formula.

Each is discussed below with a list of options, which is not meant to be exhaustive. Proposed changes in the SEEK formula will be discussed as a separate Board item at the October meeting. The Board also requested information about the legislative agenda of the other education advocates, which will be provided at the meeting based on the discussion at the September 26, 2006, Education Coalition meeting.

## **Principal Selection**

For several legislative sessions, the Kentucky Board of Education legislative agenda has included clarifying the language on principal selection to clearly indicate that the superintendent recommends candidates for the position and the council selects from among those recommended. This would continue the most common interpretation of the law prior to the Supreme Court ruling in *Back v. Robinson*. The rationale is that both the superintendent and the school council should have a common understanding of the criteria for candidate selection and come to a consensus on the best candidate if at all possible. But in any event, the person selected for principal should have the recommendation of the superintendent. Legislation relating to this issue was highly controversial and unsuccessful in 2004 and 2005.

Currently, the law does allow the superintendent or the highly skilled educator, based on the findings of the scholastic audit, to name the principal of a school that is Level 3 for two successive biennia. The conclusion of the 2006 accountability cycle will be the first time this provision may be applied. The Board could also consider expansion of these criteria.

Options:

- Require the school council to select a principal from among candidates recommended by the superintendent
- Expand the criteria for low performing schools (beyond Level 3 for two successive biennia) for which either the superintendent or the highly skilled educator would select the principal
- Take no action

## **Continue the Focus on Preschool and Kindergarten**

*Preschool.* The General Assembly's 2006 budget provided substantially more funding for preschool and expanded eligibility to students whose family income is up to 150% of the poverty level, as opposed to 135%. There are additional improvements that could be adopted by statute. For example, the Board's 2006 legislative agenda included expanding the eligibility criteria to students whose family income is up to 200% of the poverty level, which is estimated to include a total of 28,000 students, of which over 25,000 are currently being served under current guidelines. The cost of this proposal can be better

estimated after the December child count report is collected showing the additional students being served with the change in income eligibility.

Another potential change for the preschool program would be to incorporate the funding for the preschool program in the SEEK formula based on average daily attendance and the weights for poverty, special education, and for transportation. The regulatory guidelines for the program could remain in place to allay fears that the program integrity could be compromised. At the same time, this change would decrease paperwork for local districts and assure that the financing for the program increases as the SEEK base increases and as enrollment grows.

*Kindergarten.* Funding for full-time kindergarten has been a priority for school superintendents for some time. Many districts are providing this service for at least a portion of its students at local expense. In the last General Assembly session, Representative Moberly sponsored a bill that would have increased the weight for those providing full-day kindergarten from .5 to .6. Those implementing the program for the first time would receive a weight of 1. Over a period of time, the weight for both groups would be adjusted. The estimate for providing funding in fiscal year 2007-2008 for the approximately 6,000 children not currently offered a full day kindergarten program and providing an additional tenth of ADA for all kindergartners currently in full day programs was estimated to cost \$34,000,000.

The disadvantage of seeking changes in legislation that have a fiscal impact is that the status of state revenues in 2008 is unknown. The Board may wish to establish its budget priorities later when this information is available.

Options:

- Expand eligibility for preschool to 200% of the poverty level
- Fund preschool through SEEK
- Fund full-day kindergarten or increase the weight (from .5) for districts providing full-day kindergarten
- Take no action or postpone action until 2008, a budget session

**Nonresident Student Options**

“Intradistrict” open enrollment laws allow choice of public schools within district boundaries, while “Interdistrict” open enrollment laws allow choice of public schools across district boundaries. Both types of laws can be either “Mandatory,” which require districts to allow students to transfer to the school of their choice, or “Voluntary,” which allow districts to choose whether to allow students to transfer to the school of their choice. For example, Kentucky’s law relating to nonresident student agreements is an example of a voluntary interdistrict open enrollment law, while the regulation concerning transfer options for students in low performing schools to transfer to a successful school is a mandatory open enrollment provision, which may be intradistrict or interdistrict. The federal No Child Left Behind transfer provision for schools that fail to make adequate

yearly progress is another example of a mandatory open enrollment provision that may be intradistrict or interdistrict.

*Nonresident student agreements.* Current law allows students to attend a school district outside the district of residence with state funding if an agreement has been reached between the two districts. From 1992 until 2005, a local district that could not reach an agreement concerning nonresident students could appeal to the Commissioner of Education and could further appeal the Commissioner's decision to the Kentucky Board of Education. The Franklin Circuit Court held that the standard for review, which at the time, was a requirement for the Commissioner and the KBE to "... give preference to the best interest of the individual student", is a vague standard, does not have legal standing because it is unclear, and is an unconstitutional delegation of power by the General Assembly. Because of the court ruling, which was not appealed, there is currently no appeal if the two districts cannot agree.

In 2005, the General Assembly deleted the "best interest of the individual student" standard. The law could be further amended to provide clearer guidance on the review standard for an appeal. The statute could specify that the board and the commissioner may consider the impact of the agreement on all the students in the districts involved. Criteria that could be considered include: the impact on programs, school facilities, transportation and staffing, and the performance of the two school districts involved.

*Transfer from low performing schools failing to meet their goals.* The Kentucky Board of Education is authorized under KRS 158.6455(4) to include transfer provisions as part of the sanctions for schools failing to meet their goals. By administrative regulation, a student attending a Level 3 school for two biennia may transfer to a successful school in the district or the superintendent is to make arrangements with a neighboring district. The school district in which the student is enrolled receives the SEEK funding, and the student's resident district is responsible for all transportation costs for the transferring student. The Board could consider requiring any district with a Level 3 school for two biennia to enter into a nonresident student agreement with all receptive neighboring districts operating schools meeting their goals to expand choice. The status of the requesting student's school could also be a criterion for approving nonresident disputes. Consideration could be given to requiring the sending district to transfer an amount equal to the local revenue per pupil up to the amount of the receiving district's local revenue per pupil to assure that the receiving district's taxpayers are not subsidizing the transfers.

Options:

- Provide grounds for appealing nonresident student agreements to the Commissioner and the Kentucky Board of Education
- Require a district with a Level 3 school for two biennia to make arrangements with all neighboring districts, which have successful schools at the same grade organizational level available for student transfer, if the district does not operate a successful school. Consider transfer of the local revenue per pupil up to the amount the receiving district's local revenue per pupil

- Recommend an LRC study considering all factors and making recommendations for legislative enactment
- Take no action

## **Prevailing Wage**

Since 1996, state law has required construction workers on state, school district or local government public construction projects costing \$250,000 or more to be paid at least the prevailing wage of the locality in which the project is built. Prevailing wage proponents argue that the higher wages result in better quality construction that is built more efficiently by more highly skilled and productive workers. Opponents believe that the law results in higher costs with little evidence of improved quality. Some also argue that it reduces competition because of the limitations placed on the contractor and the increased paperwork.

In December 2001, the Kentucky Legislative Research Commission's Program Review and Investigations Committee completed a study of Kentucky's prevailing wage laws and procedures. The report found "There was substantial evidence that prevailing wage laws did increase the initial costs of construction. It was unclear, however, whether the requirements resulted in higher quality construction." Based on responses to a staff survey to school district superintendents (116 of 176 school districts responding), 95.7% districts reported that prevailing wage had increased the initial cost of construction and only 4% thought the increased wages improved quality. In addition, the Program Review and Investigations report found that the method for calculating the prevailing wage does not provide representative wages and that the wages are often higher than average wages paid in the geographical area. Other external studies reviewing the impact of prevailing wage on Kentucky school construction have found little or no significant increase in the cost of school construction, but the Program Review and Investigation study noted that several of the studies omit factors affecting construction costs.

The study made a number of recommendations requiring legislative changes that would help yield prevailing wages that would be more representative of local wages. These include:

- Use a data collection that provides better coverage of all construction workers in an area, such as a survey of contractors doing commercial contractors with follow-up with those who do not respond;
- Discontinue use of the majority wage;
- Eliminate wages paid to workers on previous prevailing wage projects from the determinations for later projects;
- Reduce the number of unrelated counties that are grouped together;
- Cease using the federal prevailing wage if the above changes are made; and
- Validate evidence submitted for prevailing wage determinations.

The 2006 Kentucky Board of Education legislative agenda included suspending the prevailing wage requirement for school construction for two to five years to study the impact so that a more accurate determination could be made about the impact of the prevailing wage law. Consideration could also be given to process for establishing a more representative wage. Legislation has been introduced in previous sessions to repeal prevailing wage with no success and much opposition by the labor unions.

Options:

- Suspend the prevailing wage requirement for school construction for two to five years to study the impact so that a more accurate determination could be made about the impact of the prevailing wage law
- Seek changes to make the prevailing wage more representative of the region's actual wages
- Take no action

### **Sales Tax Holiday**

The purpose of a tax holiday is to provide temporary taxpayer relief for a specific period of time. States usually provide the holiday during August for back to school shopping and generally the provisions apply to purchases, such as clothing, footwear and sometimes computer equipment. States usually place a ceiling on the price for eligible items, such as clothing under \$100 or computer equipment under a certain price. Proponents see this as a way to lessen the burden on families and to stimulate the local economy. For example, a family spending \$100 saves \$6 on these necessary items. Critics claim the program is artificially tampering with the market causing distortions in spending patterns with little real benefit to the participants, is difficult to administer, and allows retailers to offset sale prices by the sales tax savings. Another consideration is that this will reduce state general fund revenues available to support education. According to the Office of the State Budget Director, 14 states and Washington D.C. have adopted tax holidays. A document summarizing information about states which have adopted a holiday, including the number of days, items included, maximum cost, initial year of implementation, and 2006 dates for implementation is included in Appendix A. In 2005, Representative Damron introduced a bill to create a sales tax holiday in Kentucky, but no action was taken.

Option:

- Establish a tax-free holiday in Kentucky
- Recommend an LRC study to further analyze the impact of a tax-free holiday on Kentucky
- Take no action

### **Tobacco free schools**

Originally enacted on March 31, 1994, as part of the Goals 2000: Educate America Act (Public Law 103-227), and re-authorized in January 2002 as Part C (21<sup>st</sup> Century Schools) of Title IV of ESEA, the Pro Children Act requires that States not permit

smoking in any indoor facility, or in some cases a portion of a facility, used routinely or regularly for the provision of children's services to persons under the age of 18 if the services are funded by Federal programs either directly or indirectly. Current Kentucky law KRS 438.050, which is not in conformity with federal law, establishes a fine of \$1 to \$5 for any person smoking in a school building or on school grounds, except for adult employees smoking in an area designated by the superintendent or principal.

According to the American Lung Association, cigarette smoking has been identified as the most important source of preventable morbidity and premature mortality worldwide. Smoking-related diseases claim an estimated 438,000 American lives each year, including those affected indirectly, such as babies born prematurely due to prenatal maternal smoking and victims of "secondhand" exposure to tobacco's carcinogens. Smoking costs the United States over \$167 billion each year in health-care costs including \$92 billion in mortality-related productivity losses and \$75.5 billion in excess medical expenditures. (Smoking 101 Fact Sheet, American Lung Association, March 2006) In the United States, it has been estimated that about 7.8 million people, 12 years and older currently use smokeless tobacco regularly. Smokeless tobacco causes significant health risks and is not a safe substitute for smoking cigarettes. It contains the same chemical as cigarettes (nicotine) and can still lead to nicotine addiction and dependence. (Smokeless Tobacco Fact Sheet, American Lung Association, April 2006)

Options:

- Expand the smoking ban to all school property
- Ban smoking at school-sponsored events held on or off school property
- Ban smokeless tobacco on school property
- Ban smokeless tobacco at school-sponsored events held on or off school property
- Take no action.

**Staff Recommendation and Rationale:**

The Kentucky Board of Education should endorse those proposals or positions it deems appropriate for consideration by the 2007 General Assembly.

**Impact on Getting to Proficiency:**

One of the guiding principles in formulating legislative proposals is the goal of reaching proficiency by 2014.

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**Recommending Deputy**

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**Commissioner of Education**

**Date:**

October 2006